

6-21-76

Aug 4 1976  
Date  
Fee \$ 80 -

ICC Washington, D. C.

RECORDATION NO. 8385-2 Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

Re: Conditional Sale Agreement made as  
of June 22, 1976, filed with the  
ICC on June 28, 1976 at 11:20 a.m.  
and assigned recordation number 8385

My dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents, (10 Counterparts of document 2).

1. Amendment and Restatement of Conditional Sale Agreement dated as of July 30, 1976 to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation ("Builder"), 200 East Randolph Drive, Chicago, Illinois 60601, and FIRST SECURITY BANK OF UTAH, N.A., 79 South Main Street, Salt Lake City, Utah 84110, a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

2. Lease of Railroad Equipment dated as of June 22, 1976 between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessee") and FIRST SECURITY BANK OF UTAH, N.A. ("Lessor").



RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

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I. C. C.  
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. 8385-A Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald  
Page 2  
August 3, 1976

3. Agreement and Assignment dated as of July 30, 1976 between Builder, and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation, 350 Park Avenue, New York, New York 10022 ("Assignee").

4. Assignment of Lease and Guaranty dated as of July 30, 1976 by Lessor to Assignee.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton box cars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

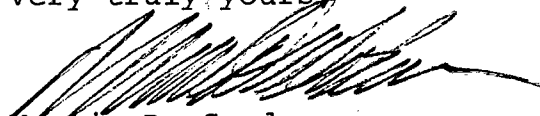
Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document..

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald  
Page 3  
August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer  
Cutler & Pickering, who will be delivering this letter  
on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Martin D. Goodman", written over a series of horizontal lines.

Martin D. Goodman  
Secretary

MDG:bsk  
Enclosures

RECORDATION NO. 8385-A Filed & Recorded  
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INTERSTATE COMMERCE COMMISSION

AMENDMENT AND RESTATEMENT OF  
CONDITIONAL SALE AGREEMENT

AMENDMENT dated as of July 30, 1976, to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation (hereinafter called "Builder" or "Vendor" as more particularly set forth in Article 18 hereof), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Vendee" and FMC Finance Corporation being hereinafter called "Beneficiary").

W I T N E S S E T H :

WHEREAS, Builder and Vendee have entered into a Conditional Sale Agreement dated as of June 22, 1976, providing for the construction, sale and delivery by Builder to Vendee and the purchase by Vendee from Builder of 200 boxcars, which Conditional Sale Agreement has been filed and recorded with the Interstate Commerce Commission and assigned Recordation No. 8385; and

WHEREAS, Vendee and SSI Rail Corp., a Delaware corporation (hereinafter called "Lessee"), have entered into a Lease of Railroad Equipment dated as of June 22, 1976 (hereinafter called the "Lease"), providing for the lease of the aforesaid 200 boxcars by Vendee to Lessee; and

WHEREAS, Builder and Manufacturers Hanover Trust Company, a New York banking corporation (hereinafter called "Assignee"), are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the aforesaid Conditional Sale Agreement, as amended hereby; and

WHEREAS, in order to induce Assignee to execute and deliver the Assignment and to pay Builder the consideration therefor, Builder and Vendee have agreed to amend the aforesaid Conditional Sale Agreement in certain respects and for convenience to restate said Conditional Sale Agreement, as so amended, in its entirety;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, Builder and Vendee agree that the Conditional Sale Agreement dated as of June 22, 1976 between said parties be, and the same hereby is, amended and restated in its entirety to read as follows:

1. Construction and Sale. Builder will construct the boxcars as set forth on Schedule A hereto (such boxcars being hereinafter called the "Equipment"). Builder will sell and deliver to Vendee and Vendee will purchase from Builder, accept delivery and pay for the Equipment. The design, quality and component parts of each unit of Equipment shall conform at delivery to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such unit. The Equipment will meet the Builder's Specifications as set forth on Schedule A hereto.

2. Inspection and Delivery. Builder will begin construction of the Equipment promptly and will begin delivery as soon as practicable. Builder will deliver the Equipment to Holbrook, Arizona.

During construction, the Equipment will be subject to inspection and approval by the authorized inspectors of Vendee. Builder will grant the inspectors reasonable access to its plant. Builder will submit each unit of Equipment to an inspector for inspection. If such unit conforms to the specifications, requirements and standards applicable thereto, the inspector shall execute and deliver to Builder a Certificate of Acceptance stating that such unit has been inspected and accepted on behalf of Vendee and is marked in accordance with Article 6 hereof, provided, however, that Builder shall not thereby be relieved of its warranties under Article 9 hereof.

Upon delivery of each unit of Equipment as provided herein, Builder shall have no further responsibility for, nor bear any risk of, any loss or damage to or destruction of such unit, provided that Builder shall not thereby be relieved of its warranties under Article 9 hereof.

Purchase Price and Payment. The total purchase price of the Equipment, inclusive of any freight charges, shall be \$6,947,150 (hereinafter called the "Total Purchase Price"), consisting of a Purchase Price of \$35,959.24 for each of the one hundred 100-ton boxcars sold hereunder and a Purchase Price of \$33,512.26 for each of the

one hundred 70-ton boxcars sold hereunder. Vendee hereby promises to pay in cash to Vendor, at such place as Vendor may designate, the Total Purchase Price of the Equipment together with interest thereon, as follows:

(a) On July 30, 1976 or such other date as may be agreed upon by Builder, Vendee and Assignee (such date being hereinafter called the "Closing Date"), an amount equal to 30% of the Total Purchase Price;

(b) On September 1, 1976, an amount equal to interest on the Conditional Sale Indebtedness (as hereinafter defined) at the rate of 10-3/4% per annum from the Closing Date to and including September 1, 1976; and

(c) In 60 consecutive quarterly installments, payable on the first day of March, June, September and December of each year, commencing December 1, 1976, an amount equal to the balance of the Total Purchase Price not paid on the Closing Date pursuant to subparagraph (a) above (such unpaid balance as from time to time outstanding being herein called the "Conditional Sale Indebtedness") together with interest on the Conditional Sale Indebtedness at the rate of 10-3/4% per annum from September 1, 1976.

Each installment payable pursuant to subparagraph (c) above shall be in the amount of \$164,121.22 and shall be applied first to the interest accrued and unpaid on the Conditional Sale Indebtedness and then to the unpaid balance of the Conditional Sale Indebtedness. If any payment hereunder falls due on a Saturday, Sunday or a day which is a public holiday at the place for payment, then the due date shall be extended to the next succeeding business day at such place and such extension will in such case be included in computing interest on the principal portion of such payment and, in the case of a payment of an installment referred to above, the amount of such installment will be increased by an amount equal to such interest in respect of such extension. Interest under this Agreement shall be calculated on the basis of a 360-day year.

Vendee will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Agreement shall be made in lawful money of the United States of America and in immediately available funds.

The payment by Vendee on the Closing Date of the amount referred to in subparagraph (a) above shall be conclusive evidence that all of the conditions precedent to the obligations of Vendee with respect to the Equipment hereunder and under the Lease have been satisfied.

4. Taxes. Vendee will pay promptly all local, state, federal and foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits taxes and similar taxes) and all license fees, assessments, charges, fines or penalties (all such taxes, fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. Vendee will also pay promptly all Impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Vendor solely by reason of its ownership thereof, and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect Vendor's title to or security interest in the Equipment. If any such Impositions shall have been charged or levied against Vendor directly and paid by Vendor, Vendee shall reimburse Vendor upon the presentation of an invoice therefor and any amounts so paid by Vendor shall be secured by and under this Agreement.

5. Title to the Equipment. Vendor shall and hereby does retain full security title to and property in, and a security interest in, the Equipment and all proceeds thereof for itself and for the express benefit of Assignee to secure the payment, when due, of the Conditional Sale Indebtedness, interest thereon and all other payments to be made by Vendee hereunder and the performance of all agreements of Vendee herein contained, notwithstanding any provision of this Agreement limiting the liability of Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by Vendee and Lessee as provided in this Agreement and the Lease.

Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) that are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) that are required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Vendee hereby irrevocably appoints Vendor, during any period in which a Default hereunder is in existence (but subject to the authority granted to Lessee pursuant to the first paragraph of Section 9 of the Lease so long as no Event of Default specified in Section 10 of the Lease shall have occurred and be continuing), its agent and attorney-in-fact to assert and enforce from time to time, in the name of and for the account of Vendee, whatever claims and rights Vendee may have with respect to the Equipment, as Vendee, against Builder or any other person or entity.

Except as otherwise specifically provided in this Agreement, when Vendee shall have paid the Total Purchase Price in full, together with interest thereon and all other payments to be made by Vendee hereunder, and all of Vendee's obligations herein contained shall have been performed, absolute right to possession of, title to and property in the Equipment shall pass to and vest in Vendee without further action on the part of Vendor, except that Vendor if so requested by Vendee (and at Vendee's expense) shall execute and deliver to Vendee a bill of sale for the Equipment "as-is, where-is", and without warranty of any kind except only that the Equipment is free from all liens and encumbrances created hereunder in favor of Vendor.

6. Marking of the Equipment. Vendee will cause each unit of the Equipment to be numbered with its identifying number and the number of the ICC filing relating thereto. Vendee will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words:

"Owned by a Company under a Security Agreement  
filed under the Interstate Commerce Act, Sec-  
tion 20c"

or other appropriate markings approved by Vendor. Vendee will make, or cause to be made, the changes thereof and additions thereto which may be required by law in order to protect Vendor's title to and property in the Equipment and its rights under this Agreement. Vendee will not operate or permit to be operated any unit until such markings have been made thereon and will replace or cause to be replaced promptly any such markings which may be removed, defaced or destroyed.

The identifying numbers shall be those set forth in Schedule A to this Agreement. Vendee will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new number or



numbers to be substituted therefor, which statement previously shall have been filed with Vendor and filed, recorded or deposited on behalf of Vendee in all public offices where this Agreement shall have been filed, recorded or deposited. Except as provided in this paragraph, Vendee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates or its sub-lessees on railroad equipment used by them of the same or a similar type, for convenience of identification of the rights of Lessee or any such affiliate or sub-lessee to use the Equipment as permitted under the Lease.

7. Maintenance: Compliance with Laws and Rules. Vendee will cause the Equipment to be maintained in good order and repair at its own expense. Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects with all laws of the jurisdictions in which its or such lessees' or users' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. If any such laws or rules require the alteration of any unit of the Equipment, or the replacement of any part of any unit of the Equipment or any addition to any unit of the Equipment, Vendee will comply therewith at its own expense.

8. Indemnities. Vendee shall indemnify, protect and hold harmless Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expense in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by Vendor of title to or a security interest in the Equipment, the ordering, acquisition, lease, use, operation, condition, purchase, delivery, rejection, storage or return of any unit of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any unit of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains subject to this Agreement, or the transfer of title to the Equipment by Vendor pursuant to any of the provisions of this Agreement, except, however,

any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Total Purchase Price together with interest thereon and the conveyance of title to the Equipment, or the termination of this Agreement in any manner whatsoever. Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

9. Builder's Warranty. Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Schedule A hereto and, except in cases of articles and materials specified by Vendee and not manufactured by Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service. The liability of Builder under this warranty shall be limited, as Builder may elect, (i) to repair of the defect at Builder's plant at Portland, Oregon, or (ii) to replacement of the defective part, or (iii) to the cost of repair or replacement according to the Association of American Railroads Code of Rules Governing Conditions of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The foregoing warranty of Builder with respect to each unit of the Equipment shall begin at the time of delivery of such unit of Equipment under this Agreement and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Builder. Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

Neither the inspection as provided in Article 2 hereof nor any examination nor the acceptance of any units of Equipment as provided in said Article 2 shall be deemed a waiver or a modification by Vendee of any of its rights under this Article 9.

10. Assignment. On or before the Closing Date Builder shall, by execution and delivery of the Assignment, assign certain of its rights hereunder to Assignee under and pursuant to the terms and conditions and subject to the reservations set forth in the Assignment. Vendee recognizes and confirms for the benefit of Assignee and its successors

and assigns the title to and security interest in the Equipment retained hereunder, and agrees that all payments to be made by Vendee hereunder (except under subparagraph (a) of the first paragraph of Article 3 hereof) shall be made to Assignee at its address specified in Article 20 hereof. Vendee expressly represents for the purpose of assurance to Assignee and as part of the consideration for the acquisition of Builder's rights by Assignee pursuant to the Assignment that the rights of Assignee to the entire unpaid Conditional Sale Indebtedness together with interest thereon as well as all other rights hereunder which shall be assigned under the Assignment shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation or warranty of Builder hereunder or otherwise with respect to the Equipment or the manufacture, construction or delivery or warranty of the Equipment, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by Builder or by reason of any act or omission on the part of Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee against, and only against, Builder.

11. Casualty Occurrence and Prepayment. In the event that a Casualty Occurrence (as defined in Section 7 of the Lease) shall occur with respect to any unit of Equipment, Vendee shall promptly after it shall have determined that such unit has suffered a Casualty Occurrence, notify Vendor fully as to the details thereof. On the next succeeding date on which a quarterly installment becomes due pursuant to subparagraph (c) of the first paragraph of Article 3 hereof, Vendee shall pay to Vendor a sum equal to the portion of the Purchase Price of such unit remaining unpaid on the date of such payment plus interest accrued thereon as of such date. For the purpose of this Article, each payment made in respect of the Equipment pursuant to subparagraph (a) or (c) of the first paragraph of Article 3 of this Agreement shall be deemed to be payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the Total Purchase Price of the Equipment. Any money paid to Vendor pursuant to this Article shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness. Any condemnation payments or insurance proceeds received by Vendor in respect of a unit suffering a Casualty Occurrence shall be deducted from the amount payable by Vendee to Vendor in respect of such Casualty Occurrence. Upon the payment by Vendee to Vendor of the sum required to be paid pursuant to this Article with respect to

a unit of Equipment suffering a Casualty Occurrence, title to such unit and the absolute right to possession thereof shall pass to Vendee without further action on the part of Vendor.

12. Defaults. In the event that any one or more of the following events (each being herein called a "Default") shall occur and be continuing, to wit:

(a) Failure to pay in full any installment of the Conditional Sale Indebtedness and the interest thereon or any other sum payable by Vendee as provided in this Agreement within ten days after the payment thereof shall be due hereunder; or

(b) Failure to observe or perform any other covenant or agreement to be observed or performed by Vendee hereunder which failure continues for 30 days after written notice of such failure is given to Vendee by Vendor; or

(c) Any Event of Default specified in Section 10 of the Lease shall have occurred and be continuing; or

(d) Institution of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law or similar law for the relief of debts, by or against Vendee, and if instituted against Vendee are consented to or are not dismissed within 60 days after such institution; or

(e) A trustee, receiver or liquidator is appointed for Vendee or for a substantial part of its property and is not discharged within 60 days after such appointment; or

(f) Vendee becomes insolvent or admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee, receiver or liquidator for it or for a substantial part of its property; or

(g) Vendee shall make or suffer any assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then, and in any such event, Vendor may, upon written notice to Vendee and upon compliance with any mandatory legal requirements then in force and applicable to such action by Vendor, declare the entire Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness, with interest as aforesaid and all other amounts due and payable by Vendee hereunder, and to collect such judgment out of the property of Vendee.

Vendor may waive any Default and its consequences and rescind and annul any such declaration by notice to Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no Default had existed and no such declaration had been made. No such waiver, rescission or annulment shall apply to or affect any other or subsequent Default or impair any rights or remedies consequent thereon.

13. Remedies. If a Default shall have occurred and be continuing, then at any time after the Conditional Sale Indebtedness shall have been declared immediately due and payable as provided in Article 12 hereof, Vendor may, at its option and in compliance with any mandatory legal requirements then in force and applicable to such action by Vendor, exercise any one or more of the following rights and remedies, subject, however, to the rights of Lessee under the Lease so long as no Event of Default specified in Section 10 of the Lease shall have occurred and be continuing:

(a) Vendor may take immediate possession of the Equipment or any one or more units thereof without liability to return to Vendee any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of Vendee or Lessee or any other person, and for such purpose may enter upon the premises of Vendee or other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage or other facilities of Vendee. If Vendor shall designate a reasonable point or points for the delivery of the Equipment to Vendor, Vendee shall at its own expense and risk, forthwith and in the usual manner cause the Equipment to be moved to and assembled at such location and shall there deliver the Equipment to Vendor. At the option of Vendor, Vendor may keep the Equipment on any of the premises of Vendee or

Lessee until Vendor shall have sold, leased or otherwise disposed of the same, and for such purpose Vendee agrees to furnish, for a period not to exceed 150 days, without charge or rent for storage, the necessary facilities at any point or points reasonably selected by Vendor. The agreements set forth in this subparagraph (a) are of the essence of this Agreement, and upon application to any court having equity jurisdiction, Vendor shall be entitled to a decree of specific performance of such provisions. Vendee hereby expressly waives any and all claims against Vendor for damages of whatsoever nature in connection with any retaking of any unit of Equipment in a reasonable manner.

(b) Vendor may elect to retain the Equipment in satisfaction of the unpaid Conditional Sale Indebtedness and interest thereon and dispose of the Equipment as Vendor shall deem best. Vendor shall give Vendee written notice of its election to retain the Equipment at least thirty (30) days prior to any disposal of the Equipment by Vendor.

(c) Vendor may at its election and upon reasonable notice to Vendee, with or without retaking possession of the Equipment, sell the Equipment or any one or more units thereof in one lot or in separate lots, without the necessity of gathering at the place of sale the property to be sold, free from any and all claims of Vendee or any other party claiming from, through or under Vendee at law or in equity, at public or private sale and with or without advertisement as Vendor may determine; provided that if prior to such sale and prior to the making of any contract for such sale Vendee shall tender full payment of the total unpaid Conditional Sale Indebtedness together with interest thereon and all other payments due under this Agreement as well as the expenses of Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, such sale (including reasonable attorneys' fees), the possession of and title to the Equipment shall pass to Vendee. Vendor may purchase at any such sale or sales. The proceeds of any such sale, less the attorneys' fees and any other expense incurred by Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to Vendor under the provisions of this Agreement.

15. Insurance. Vendee will maintain, or cause to be maintained, physical damage, fire and extended coverage insurance with a reliable insurance company or companies to the full insurable value of the Equipment, provided that in no event shall the amount of such insurance be less than 120% of the Conditional Sale Indebtedness. Upon demand, Vendee will furnish to Vendor a copy of such insurance policies or a certificate of such insurance. Such insurance shall name Vendor as an additional insured and loss payee, and shall provide that it cannot be cancelled except upon 30 days' prior written notice to Vendor.

16. Possession and Use. Vendee, so long as no Default shall have occurred and be continuing, shall be entitled to the use and possession of the Equipment, but only upon and subject to all the terms and conditions of this Agreement.

17. Prohibition Against Liens. Vendee will pay or satisfy and discharge, or cause to be paid or satisfied and discharged, any and all sums claimed by any party by, through or under Vendee or its successors or assigns which, if unpaid, might be a lien, charge or security interest on or with respect to any unit of the Equipment, equal or superior to Vendor's interest therein, provided that Vendee shall not be required to pay or discharge or to cause to be paid or discharged any such claim so long as the validity thereof shall be contested in good faith and by appropriate proceedings and the non-payment thereof does not, in the judgment of Vendor, adversely affect Vendor's title to or security interest in the Equipment or its rights under this Agreement.

18. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder to Assignee pursuant to the Assignment, the Builder and, after any such assignment, both the Assignee as regards such rights and also the Builder as regards any rights hereunder not so assigned; and the term "Builder" whenever used in this Agreement means, both before and after any such Assignment, FMC Corporation and any successor or successors for the time being to its manufacturing properties and business.

19. Recording. Vendee will cause this Agreement, any assignments hereof, and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by Vendor for the purpose of proper protection, to the satisfaction of Vendor, of its title to and security interest in the Equipment and

its rights under this Agreement. Vendee will promptly furnish to Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to Vendor.

20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly given if delivered or mailed as follows:

- (a) To Builder at: FMC Corporation  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attention: James A. Broderick
- (b) To Vendee at: First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84110  
Attention: Trust Department,  
Corporate Division
- (c) To Assignee at: Manufacturers Hanover Trust  
Company  
350 Park Avenue  
New York, New York 10022

or to such other address as may have been furnished in writing by such party to the other parties.

21. Governing Law. Vendee warrants that its chief place of business and its chief executive offices are located in the State of Utah. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and any rights arising out of the marking of the units of the Equipment as provided herein.

22. Contingencies. Builder shall not be liable to Vendee for any loss or damage suffered as a result of Builder's failure to deliver or delay in delivering the Equipment where such failure or delay is caused by fire, flood, natural disaster, labor trouble (including strikes, slow-downs or walk-outs) war, riot, civil disorder, embargo, government regulations or restrictions of any kind, expropriation of plant by federal or state authority, interruption of or delay in transportation, power failure, inability to obtain materials or supplies, accident, explosion, act of God or other causes of like or different character beyond Builder's control.

23. Disclaimer of Consequential Damages. BUILDER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. CONSEQUENTIAL DAMAGES SHALL INCLUDE LOSS OF USE, INCOME OR PROFIT,



OR ANY OTHER ECONOMIC LOSS AND LOSS FROM PHYSICAL DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR PROCESSED IN THE EQUIPMENT).

24. No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, N.A., a national banking association, or for the purpose or with the intention of binding such national banking association personally but are made and intended for the purpose of binding only the Trust Estate as such term is defined in Section 1.02 of the Trust Agreement dated as of June 22, 1976 between such national banking association and the Beneficiary, and this Agreement is executed and delivered by such national banking association solely in the exercise of the powers expressly conferred upon such national banking association as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against such national banking association or the Beneficiary (except as provided in Section 4.01 of said Trust Agreement) or on account of any representation, undertaking or agreement of such national banking association, as Vendee, or the Beneficiary (except as provided in Section 4.01 of said Trust Agreement), either express or implied, all such personal liability, if any, being expressly waived and released by Vendor and by all persons claiming by, through or under the Vendor; provided, however, that Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.


25. Execution. This Agreement may be executed in any number of counterparts and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereby executed this Amended and Restated Conditional Sale Agreement as of the day and year first set forth above.

FMC Corporation

[Corporate Seal]

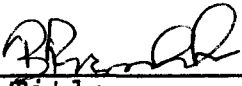
Attest:

  
ASSISTANT SECRETARY

[Corporate Seal]

Attest:

By

  
Title:

VICE PRESIDENT

FIRST SECURITY BANK OF UTAH, N.A.,  
as Trustee

By

Title:

STATE OF ILLINOIS )  
 ) SS.:  
COUNTY OF COOK )

On this *2nd* day of *August*, 1976, before me personally appeared *BRAN ECH*, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of FMC Corporation, that one of the seals affixed to the aforementioned instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Alvin A. Lewis*  
\_\_\_\_\_  
Notary Public.

[Notarial Seal]

My Commission Expires:

My Commission Expires January 9, 1979

STATE OF UTAH                    )  
                                      )  SS.:  
COUNTY OF SALT LAKE        )

On this 2nd day of August, 1976, before me personally appeared Robert S. Clark, to me personally known, who, being by me duly sworn, says that he is an authorized officer of First Security Bank of Utah, N.A., a national banking association, that one of the seals affixed to the aforementioned instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Barbara J. Allen

[Notarial Seal]

My Commission Expires: 11-18-79

SCHEDULE A TO CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton boxcars (FMC Corporation specification #17774, revision #3, dated June 9, 1976.)	100	APA 1850-1949*
100-ton boxcars (FMC Corporation, specification #17775)	100	APA 1700-1799*

\* Road Number of The Apache Railway Co.

OR ANY OTHER ECONOMIC LOSS AND LOSS FROM PHYSICAL DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR PROCESSED IN THE EQUIPMENT).

24. No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, N.A., a national banking association, or for the purpose or with the intention of binding such national banking association personally but are made and intended for the purpose of binding only the Trust Estate as such term is defined in Section 1.02 of the Trust Agreement dated as of June 22, 1976 between such national banking association and the Beneficiary, and this Agreement is executed and delivered by such national banking association solely in the exercise of the powers expressly conferred upon such national banking association as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against such national banking association or the Beneficiary (except as provided in Section 4.01 of said Trust Agreement) or on account of any representation, undertaking or agreement of such national banking association, as Vendee, or the Beneficiary (except as provided in Section 4.01 of said Trust Agreement), either express or implied, all such personal liability, if any, being expressly waived and released by Vendor and by all persons claiming by, through or under the Vendor; provided, however, that Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

25. Execution. This Agreement may be executed in any number of counterparts and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereby executed this Amended and Restated Conditional Sale Agreement as of the day and year first set forth above.

FMC Corporation

[Corporate Seal]

Attest:

By \_\_\_\_\_  
Title:

\_\_\_\_\_  
[Corporate Seal]

FIRST SECURITY BANK OF UTAH, N.A.,  
as Trustee

Attest:

*Arthur B. Eichner*

By 

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